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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 6, 1998

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

CASE NO. INS980124

Ex Parte, in re: In the matter
of adopting an amended regulation
applicable to settlement agents

ORDER TO TAKE NOTICE

WHEREAS, § 12.1-13 of the Code of Virginia provides that the Commission shall have the power to promulgate rules and regulations in the enforcement and administration of all laws within its jurisdiction, and § 6.1-2.25 of the Code of Virginia provides that the Commission may issue rules, regulations and orders consistent with and necessary to carry out the provisions of the Consumer Real Estate Settlement Protection Act (§ 6.1-2.19 et seq. of the Code of Virginia);

WHEREAS, the Bureau of Insurance has submitted to the Commission a proposed revised regulation entitled "Rules Governing Settlement Agents"; and

WHEREAS, the Commission is of the opinion that the proposed revised regulation should be adopted;

THEREFORE, IT IS ORDERED THAT:

(1) All interested persons TAKE NOTICE that the Commission shall enter an order subsequent to August 6, 1998, adopting the revised regulation proposed by the Bureau of Insurance unless on or before August 6, 1998, any person objecting to the adoption of such revised regulation files a request for a hearing, and in such request specifies in detail their objection to the adoption of the proposed revised regulation, with the Clerk of the Commission, Document Control Center, P.O. Box 2118, Richmond, Virginia 23218;

(2) An attested copy hereof, together with a copy of the proposed revised regulation, be sent by the Clerk of the Commission to the Virginia State Bar, the Virginia Real Estate Board, and the Bureau of Insurance in care of Deputy Commissioner Mary M. Bannister who shall forthwith give further notice of the proposed adoption of the revised regulation by mailing a copy of this order, together with a complete draft of the proposed revised regulation to all title insurance companies, title insurance agents, and title insurance agencies licensed in the Commonwealth of Virginia; and

(3) The Bureau of Insurance shall file with the Clerk of the Commission an affidavit of compliance with the notice requirements of paragraph (2) above.

STATE CORPORATION COMMISSION
BUREAU OF INSURANCE

CHAPTER 395

RULES GOVERNING SETTLEMENT AGENTS.

14 VAC 5-395-10. Purpose.

A. The purpose of this chapter is to implement the Consumer Real Estate Settlement Protection Act (§ 6.1-2.19 et seq. of the Code of Virginia).

B. This chapter applies to all title insurance agents, title insurance agencies and title insurance companies providing escrow, closing or settlement services involving the purchase of or ~~financing~~ lending on the security of real estate containing not more than four residential dwelling units in the Commonwealth of Virginia.

C. The Bureau of Insurance shall issue the necessary forms to carry out the provisions of the Act and this chapter.

14 VAC 5-395-20. Definitions.

As used in this chapter:

"Act" means the Consumer Real Estate Settlement Protection Act (§ 6.1-2.19 et seq. of the Code of Virginia). Unless otherwise defined herein, all terms used in this chapter shall have the meaning as set forth in the Act.

"Agent" or "insurance agent" when used without qualification, means an individual, partnership, limited liability company, or corporation that solicits, negotiates, procures or effects contracts of insurance or annuity in this Commonwealth.

"Bureau" means the State Corporation Commission Bureau of Insurance.

"Title insurance agent" means an agent licensed in this Commonwealth to solicit, negotiate, procure, or effect title insurance on behalf of title insurance companies licensed under Chapter 46 (§ 38.2-4600 et seq.) of Title 38.2 of the Code of Virginia.

"Title insurance agency" means a partnership, limited liability company, or corporation licensed in this Commonwealth as a title insurance agent.

"Title insurance company" means any company licensed to transact, or transacting, title insurance in this Commonwealth.

14 VAC 5-395-30. Registration.

Every title insurance agent, title insurance agency and title insurance company ~~providing~~ that (i) provides escrow, closing or settlement services involving the purchase of or ~~financing~~ lending on the security of real estate containing not more than four residential dwelling units in the Commonwealth of

Virginia and (ii) is listed as the settlement agent on the settlement statement for such transaction shall ~~register~~ be required to be registered as a settlement agent with the Virginia State Bar in accordance with the provisions of § 6.1-2.26 of the Code of Virginia.

14 VAC 5-395-40. Insurance and bonding requirements.

A. Every title insurance agent and title insurance agency that acts as a settlement agent in the Commonwealth of Virginia shall file with the Bureau at the time of registration with the Virginia State Bar and on or before July 1, every year thereafter, a copy of its errors and omissions insurance policy, or evidence of such insurance policy, providing limits of at least \$250,000 per occurrence or per claim and issued by an insurer authorized to do business in the Commonwealth of Virginia.

B. Every title insurance agent and title insurance agency that acts as a settlement agent in the Commonwealth of Virginia shall file with the Bureau at the time of registration with the Virginia State Bar and on or before July 1, every year thereafter, a copy of its blanket fidelity bond or employee dishonesty insurance policy, or evidence of such bond or insurance policy, providing limits of at least \$100,000 per occurrence or per claim and issued by an insurer authorized to

do business in the Commonwealth of Virginia. Settlement agents that have no employees except the owners, partners, shareholders, or members may file annually with the Bureau a waiver of the fidelity bond or employee dishonesty insurance policy. Such waiver shall be on a form prescribed by the Bureau.

C. Every title insurance agent and title insurance agency that acts as a settlement agent in the Commonwealth of Virginia shall file with the Bureau a surety bond in an amount not less than \$100,000 on a form prescribed by the Bureau. The original surety bond shall be filed with the Bureau at the time of registration with the Virginia State Bar and, if such bond is canceled, at the time a replacement bond is issued.

14 VAC 5-395-50. Audits.

A. Every title insurance agent, title insurance agency, and title insurance company that acts as a settlement agent in the Commonwealth of Virginia shall, at its expense, have an ~~annual~~ audit of its escrow accounts conducted by an independent certified public accountant ~~on a calendar year basis by not later than six months after the close of the previous calendar year~~ at least once each consecutive twelve-month period. Such ~~annual~~ audit shall conform with the standards established by the American Institute of Certified Public Accountants, Statement on

Auditing Standards, Special Reports, and shall be filed by the settlement agent with the Bureau ~~annually on or before July 1~~ no later than sixty days after the date on which the audit is completed.

B. Every title insurance agent or title insurance agency acting as a settlement agent shall file a copy of its ~~annual~~ audit report with each title insurance company it represents.

C. In lieu of an audit conducted by a certified public accountant, a title insurance agent or title insurance agency acting as a settlement agent shall allow each title insurance company for which it has an appointment to conduct an ~~annual~~ audit analysis of its escrow accounts ~~on a calendar year basis by not later than six months after the close of the previous calendar year~~ at least once each consecutive twelve-month period. The form of such ~~annual audit~~ analysis shall be prescribed by the Bureau. The title insurance company shall submit a copy of its ~~audit report~~ analysis to the Bureau ~~annually on or before July 1~~ no later than sixty days after the date on which the analysis is completed. With the consent of the title insurance agent, a title insurance company may share the results of its ~~audit~~ analysis with other title insurance companies that will accept the same in lieu of conducting a separate ~~audit~~ analysis.

14 VAC 5-395-60. Separate fiduciary trust account.

Every title insurance agent, title insurance agency and title insurance company that acts as a settlement agent in the Commonwealth of Virginia shall maintain a separate fiduciary trust account for the purpose of handling funds received in connection with escrow, closing, or settlement services. No other funds may be included in this escrow account. Such trust account shall be with a financial institution authorized to do business in the Commonwealth of Virginia.

14 VAC 5-395-70. Access to records.

Every title insurance agent, title insurance agency and title insurance company that acts as a settlement agent in the Commonwealth of Virginia shall make all escrow, closing, or settlement records available promptly upon request for examination by the Bureau without notice during normal business hours.

14 VAC 5-395-80. Violations.

Any violation of this chapter shall be punished as provided for in the Act.

14 VAC 5-395-90. Severability.

If any provision of this chapter or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the chapter and the application of

such provision to other persons or circumstances shall not be affected thereby.